IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/09/2002

CORAM

THE HON'BLE MR.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.P.No.21056 of 2002 and W.P.No. 19214 of 2001 and W.P.No.22365 of 2001
and
W.M.P.Nos.29105 of 2002 & 32924 of 2001

W.P.No.21056 of 2002

S.Udhayakumar,
Advocate,
No.9A, Azhagiri Nagar East Street,
Vadapalani,
Chennai - 600 026. ..... Petitioner

-Vs-

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Law Department,
Fort St.George,
Chennai - 9.

2.Union of India,
rep. by its Secretary to Ministry of
Law, Justice and Company Affairs,
New Delhi.

3.The Mayor,
Corporation of Chennai,
Chennai ..... Respondents.

W.P.Nos. 19214 & 22365 of 2001
K.Sridhar Kumar,
S/o.K.H.Shastri,
Sankara Nilayam,
60, Park Street,
Alwar Thiru Nagar,
Chennai - 87.
..Petitioner in both the W.Ps.
Vs.
1. The Chief Election Commissioner,
State Election Commission,

Government of Tamil Nadu,
100 Feet Road, Vadapalani,
Chennai - 600 026.
2. The Commissioner,
Corporation of Chennai,
Chennai - 600 003.
3. The Returning Officer (Elections),
Corporation of Chennai,
Chennai - 600 003.
..Respondents 1 to 3 in W.P.19214/01
& Respondents 2 to 4 in W.P.22365/01.
4. Mr.M.K.Stalin,
Worshipful Mayor of Chennai,
Rippon Buildings,

Chennai - 600 003.
..Respondent-4 in W.P.19214/01 &
Respondent-1 in W.P.22365/01.

PRAYERS: W.P.No.21056 of 2001 is filed under Article 226 of the Constitution of India for the issuance of writ of Declaration, for the reasons as stated therein.
W.P.No.19214 of 2001 is filed under Article 226 of the Constitution of India for the issuance of writ of Declaration, for the reasons as stated therein.
W.P.No.22365 of 2001 is filed under Article 226 of the Constitution of India for the issuance of writ of Quo Warranto, for the reasons stated therein.

Mr.K.M.Vijayan, Senior Counsel : For Petitioner in W.P.21056/02
For M/s. La Law.

Mr.V.Balasubramanian : For Petitioner in W.Ps.19214 &
22365 of 2001
^Mr.N.R.Chandran, Advocate Genenral : For R1 in W.P.21056/02
Assisted by Mr.V.Raghupathy,
Government Pleader.
Mr.V.T.Gopalan, Addl.Solicitor General:For R2 in W.P.21056/02
Assisted by Mr.J.Madanagopal Rao,
S.C.G.S.C.
Mr.S.Ramaswamy : For R3 in W.P.21056/02
Mr.C.Ravichandran : For R2 in W.P.19214/01 &
For R3 in W.P.22365/01.
Mr.R.Viduthalai : For R4 in W.P.19214/01 &
For R1 in W.P.22365/01.
Mr.V.Raghupathy, Govt.Pleader:For R1 & R3 in W.P.19214/01
For R2 & R4 in W.P.22365/01

:O R D E R

THE HON'BLE THE CHIEF JUSTICE

Though these three writ petitions relate to the mayoral post of Chennai City Municipal Corporation, in W.P.No.21056 of 2002 the constitutionality of the Tamil Nadu Municipal Laws (Amendment) Act, 2002 (T.N. Act 29 of 2002) is challenged, while at issue, in other two writ petitions viz., 19214 and 22365 of 2001, is the eligibility of the present Mayor Mr.M.K.Stalin to contest the Mayoral post elections, which was held during October, 2001.

2. First of all, we deal with W.P.No.21056 of 2002. This is a pro bono publico filed by one Mr.S.Udhayakumar, advocate making the State of Tamil Nadu, Union of India and the Mayor of Chennai City Municipal Corporation as party respondents. Mr.M.K.Stalin was elected as the Mayor of the 3rd respondent-Corporation in the elections held during the month of October, 2001. The Chennai City Municipal Corporation is governed by the Chennai City Municipal Corporation Act, 1919, which is hereinafter referred to as the Act. Section 28 of the Act provides for the election of Mayor. Once before, Mr.M.K.Stalin was elected as Mayor in the year 1996 and had been functioning as such till 2001, and after the expiry of the 5 years term he again contested and won. He had not only been the Mayor but had also been the legislator too. He had been representing the Thousand Lights constituency of Chennai city ever since 1996, as he was again elected during May 2001 and had been holding dual posts of both Legislator and Mayor. Hitherto, there was no hindrance for holding dual posts. By Amending Act titled Tamil Nadu Municipal Laws (Amendment) Act, 2002 (T.N. Act 29 of 2002), herein after referred to as the Municipal Amendment, holding of dual posts is dispensed with by introducing Section 52-A, to the effect that if one is a legislator, he cannot be simultaneously be a Mayor or Deputy Mayor, and has to choose either of the same, and for that purpose 15 days time from the date of publication of the Municipal Amendment has been provided, and if there is no option exercised, then automatically such a legislator ceases to be a Mayor or Deputy Mayor, as the case may be. It is needless to mention that if the person resigns his post of Legislator, then he is entitled to his elected post of Mayor or Deputy Mayor. The Municipal Amendment was notified on 04.06.2002 and a notification was issued in Tamil Nadu Government Gazette in exercise of the power under Section 6 of the Municipal Amendment.

3. We feel it apt to extract both Section 2 and also Section 6 of the Municipal Amendment.
Section-2 runs as follows:-
"In the Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as the 1919 Act), after Section 52, the following Section shall be inserted, namely:-
52-A. Disqualification for Mayor and Deputy Mayor:-

Notwithstanding anything contained in this Act, no person shall be qualified for being elected as, and for being a Mayor or Deputy Mayor if he is a member of the Legislative Assembly of the State or a member of either House of Parliament."

"Section - 6: Notwithstanding anything contained in the 1919 Act, the 1971 Act, the 1981 Act or the 1920 Act, as amended by this Act, or in any other law for the time being in force or in any judgment, decree or order of a court, if a member of a Legislative Assembly of the State or a member of either House of Parliament holds the office of Mayor or Deputy mayor of a Municipal Corporation or Chairman or ViceChairman of a Municipality or of a Town Panchayat immediately before the date of publication of this Act in the Tamil Nadu Government Gazette, he shall cease to hold such office at the expiration of fifteen days from the date of such publication and such office shall become vacant, unless he ceases to be a member of the Legislative Assembly of the State or a member of either House of Parliament before the expiry of the said period of fifteen days, by resignation or otherwise".

4. The matter came up for admission on 17.6.2002 on which date, the writ petition was admitted and as the learned Advocate General took notice and offered to file his counter next day, the miscellaneous petition was posted next day. After hearing all the learned counsel, an interim order was been passed on 18.6.2002 granting stay to the extent of treating the post of Mayor as not vacant so that no elections could be held to fill the said post pending the disposal of the writ petition. This order was carried in appeal to the Supreme Court but the Supreme Court has affirmed the said order. Now, the Deputy Mayor is discharging the functions attached to the post of Mayor, by virtue of Section 38-A of the Act.

5. Mr. K.M. Vijayan, learned senior counsel appearing for the petitioner, submits that the member of a Legislative Assembly cannot be disqualified to contest to a Mayoral post and that in fact, Constitution Amendment and the Act themselves provide for the inclusion of the respective Legislators as being the Municipal Authorities along with the Councillors. He further submits that when an elected Legislator is also a Mayor and there was no embargo to hold dual posts, he cannot be divested of his right and the provision under Section 2 of the Amended Act incorporating Section 52-A of the Act, cannot be held to be retrospective in operation. He submits that Sections 2 and 6 of the Municipal Amendment, if construed as retrospective in operation, directly infract the Constitutional prohibition contained in SubArticles (1) and (2) of Article 243 U of the Constitution. He further submits that the Municipal Amendment should be in consonance with the Constitutional provisions enumerated in Part IX-A by the Constitution (73 rd) Amendment Act and not the general legislative power in Entry 5 of List II to Schedule 7 of the Constitution.

6. Mr. V.T. Gopalan, learned Additional Solicitor General of India, appearing for the second respondent - Union of India, supports the argument of Mr. K.M. Vijayan, learned senior counsel, and submits that the validity of the provisions of the Act including the Municipal Amendment has to be decided on the touchstone of Part IX-A of Constitution and only on the aspects not covered by the same, resort can be had to the legislative power contained in Entry 5 of List II of Schedule 7 of the Constitution. Mr.V.T.

Gopalan submits that the Municipal Amendment is not retrospective in operation as Section 2 thereof is a substantive provision dealing with disqualification and the said substantive portion does not expressly state that the disqualification under the Amending Section is retrospective and that by necessary implication also it cannot be deduced that Section 2 of the Municipal Amendment is retrospective and as Section 6 of the Municipal Amendment is only procedural in nature and is consequential to the substantive provision contained in Section 2, the latter cannot be construed as retrospective. He further submits that the disqualification is decided at the time of entry into the post when the elections are fought and there cannot be any retrospective disqualification. He submits that a person duly elected has a vested right and cannot be removed by providing retrospective effect. He also submits that if the amendment is treated as retrospective, then it violates Article 243 U as also 243 U (2) of the Constitution.

7. Countering the above arguments, Mr. N.R. Chandran, learned Advocate General, submits that there is no locus standi for the petitioner to maintain the writ petition and that the Constitution Amendment incorporating Part IX-A has got no bearing on the Municipal Amendment and that the Municipal Amendment is not retrospective in operation but it is retro-active, that the post of Mayor is a right created by statute and it can be taken away by a statute and the Municipal Amendment is constitutionally valid.

8. In reply arguments, Mr. K.M. Vijayan, learned senior counsel, appearing for the petitioner submits that there is a locus for the petitioner as he is an elector within the Chennai City Municipal Corporation limits and that when an elector can file an Election Petition, the argument of locus is quite unsustainable regarding maintaining the writ petition.

9.Mr. V.T. Gopalan, learned Additional Solicitor General of India, submits that retro-activity applies only to declaratory legislations where there is a doubt as to what the common law on the subject is and that such a situation does not arise in the instant case.
10.In view of the respective contentions raised on either side, the following are the contentious issues arise for adjudication.:

(i) whether there is locus standi for the petitioner to main this writ petition?

(ii) whether the Muncipalities/Mayors/Deputy Mayors/Councillors are creatures of a statute or the Constitution of India?

(iii) whether the Members of the Legislative Assembly or of Parliament can be disabled from being a Mayor or Deputy Mayor of a Municipality?

(iv) whether Municipal Amendment is prospective or retrospective or retroactive?

(v) if retrosprospective, is it in breach of Constitutional mandate?

Issue No.1

11. The objection raised by Mr.N.R.Chandran, learned Advocate General is that when the person in occupant of the 3rd respondent i.e., Mr.M.K.Stalin himself is not interested in filing the writ petition, as he is only the aggrieved party, the petitioner who is a practising advocate cannot have any locus standi to maintain the writ petition. In support of his contention he cited the Judgments rendered by the Supreme Court in K.ASHOK REDDY V. GOVERNMENT OF INDIA (1994) 2 SCC 303), MALIK BROTHERS V.NARENDRA DADHICH (AIR 1999 S.C. 3211) AND BALCO EMPLOYEES' UNION V. UNION OF INDIA (2002) 2 SCC 333). In K.Ashok Reddy's case, supra, the issue arose for consideration was the transfer of Judges under Article 222 of the Constitution of India. Dealing the matter comprehensively, the Supreme Court held that the same was not justiciable at the instance of any other person excepting the aggrieved party, as the transfer relates to that particular Judge. In Malik Brothers' Case, two supra, the matter arose under Arbitration Act, 1940 and the High court of Madhya Pradesh had entertained a petition at the instance of a person not having any interest and set aside the reference and the Award made under the Act. On appeal, the Supreme Court held that appeal cannot be entertained in a matter arising out of arbitration at the instance of a person not having any interest. In Balco's Case, third supra, the Supreme Court was adjudicating a matter relating to dis-investment of a Government Factory, and when the same was challenged by the Balco Employees' Union, it was held that the matter related to the economic policy of the Government and that the employees were no way concerned with regard to dis-investment policy and that in such economic policies court had no role to play and that the Employees' Union could not have any grievance for such disinvestment and held that PIL at the instance of such employees was not maintainable. But dealing with election matters, the consideration regarding the maintainability of a case at the instance of third party are entirely different, as the election is not simply a matter between parties but is of public concern. That is why not only the Representation of the Peoples Act, 1951, but also the Chennai City Municipal Corporation Act, 1919 and the rules made thereunder permit election petitions can be maintained even by an Elector and indisputably the petitioner who is a practising advocate is also an Elector of the municipal area, and as such, the petitioner has got locus standi to maintain this writ petition.

Issue No.2

12. M/s. K.M. Vijayan and V.T. Gopalan, learned senior counsel for the petitioner and learned Additional Solicitor General of India, appearing for the petitioner and the second respondent respectively, submit that on the advent of the Constitution (73rd Amendment) Act, 1992, the matters relating to Municipalities have to be viewed in the perspective of the Constitutional provisions contained in Part IX-A and they rely upon the judgments in STATE OF

A.P. v. NATIONAL THERMAL POWER CORPN. LTD (2002) 5 S.C.C. 203) and B.K.CHANDRASHEKAR v. STATE OF KARNATAKA (AIR 1999 Karnataka 461) and submit that the constitution of Municipality including the Mayor's post and tenure thereof are governed by Part IX-A of the Constitution and not by the Act. Mr. N.R. Chandran, learned Advocate General, submits that the Municipalities are the creatures of the Statute and the Mayor's post, which is a creation under the Act, can always be taken away by amendment and the power to legislate includes power to amend and that this power still flows unfettered from Entry 5 of List II to Schedule 7 of Indian Constitution and cites the judgments rendered in VARADARAJA PILLAI v. SALEM MUNICIPAL COUNCIL (85 Law Weekly 760), AHAMED JALALUDIN v. STATE OF TAMIL NADU (1986 Writ Law Reporter Supplement 1) and JYOTI BASU v. DEBI GHOSAL (AIR 1982 S.C.C 983). In STATE OF A.P. v. N.T.P.C. (referred supra), a Constitution Bench of the Supreme Court held that several Entries in the Lists of 7th Schedule are fields of legislation and not the source of legislative empowerment and competence to legislate has to be traced to the Constitution and that the dimension given to the field of legislation by the language of an Entry in List II of the 7 th Schedule shall always subject to the limits of Constitutional empowerment to legislate and can never afford to spill over the barriers created by the Constitution. In the light of the dicta laid down by the Supreme Court, which is a law of the

land under Article 141 of the Indian Constitution, we now proceed to consider as to whether the Municipalities and the Authorities manning the same are the creatures under the Constitution or by the Act.

13. For self-governance, the then British Government, which ruled this place, had enacted the Madras City Municipal (Corporation) Act, 19 19, which was recently renamed as the Chennai City Municipal (Corporation) Act, 1919, hereinafter referred to as the Act. As is not unusual, the said Act underwent several amendments.

14. The Scheme of the Act is to have self-governance over the city limits of Chennai for providing various civic amenities like roads, water, drainage, regulation of buildings and other related matters by the elected Councillors headed by the Mayor and assisted by the Commissioner. The General Body of the Corporation comprises of its Councillors, for whose elections, Wards are earmarked and Councillors from their respective Wards form a Council and ultimate power vests in the said Council. Of course, Ward Committees are elected from among the Councillors and Standing Committees are constituted by nomination and there is a Commissioner and functions of each of them are earmarked by the Act. Here, we are concerned with the post of Mayor. Under the Act, there shall be a Mayor and a Deputy Mayor.

15. Before the advent of Constitution (73rd Amendment) Act, 1992, hereinafter referred to as the Constitution Amendment, both the Mayor and the Deputy Mayor had to get elected as Councillors and then, they would be elected from among the Councillors. The Act has now been amended making the election of Mayor by direct franchise while still the election of Deputy Mayor is indirect as he is elected by Councillors. Before the Constitution Amendment, the term of the Councillors was six years, while the term of Mayor and Deputy Mayor was two

years. Within the outer limit of 6 years for the Councillors, the out-going Mayor and Deputy Mayor were not entitled for re-election. Hitherto, legislative power to enact the laws relating to the local authorities like the Chennai City Municipal Corporation was vested in the State Government by virtue of Entry 5 of List II to Schedule 7 of the Indian Constitution. Instances galore where the democratic process and the self governance by the local authorities were scuttled because of in-action, deliberate or otherwise by the respective State Governments in not conducting the elections to the local authorities for years to come and also in not providing adequate powers and funds for sustenance of self-governance. Madras/Chennai City is no exception. For the period from 1973 to the year 1996, there had been no elections to the governing authorities, be it Mayor or Deputy Mayor or Councillors.

16. The entire legal scenario has changed since the enactment of the Constitution Amendment incorporating Parts IX and IX-A in the Constitution. Part IX deals with Panchayats while Part IX-A deals with Municipalities.

17. Part IX-A is relevant for the subject. It houses Articles 243P to 243ZG. Article 243P (e) defines 'Municipality' as an institution of self-Government constituted under Article 243Q. Clause (c) of Article 243Q mandates State Legislatures to constitute Municipal Corporation for a larger urban area. Chennai City Municipal Corporation is one of such Municipal Corporations. The composition of Municipalities is provided in Article 243 R. Sub-Article (2) thereof stipulates that the State may, by law, provide for the representation in a Municipality of -

(i) persons having special knowledge or experience in Municipal Administrations;

(ii) the members of the House of the people and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of Article 243 S

provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality.

The manner of election of the Chairperson of a Municipality is left for the State legislature. Under Article 243 S, there shall be constituted Wards Committee, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more and the State Legislatures are obligated to make law for the constitution of Wards Committees and the manner of filling of the seats in a Wards Committee, including details of election of Chairman of such Committees, leaving the

option to the States to make provision for the constitution of other Committees in addition to the Wards Committee. Article 243 T provides for reservation of seats. Article 24 3 U (1) mandates that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. The said Constitutional provision also mandates that Municipalities shall be given a reasonable opportunity of being heard in the event of the proposal to dissolve it before the tenure of 5 years. Sub-Article (2) thereof prohibits amendment of any law for the time being in force resulting in dissolution of a Municipality till the expiration of tenure of 5 years mentioned above. Sub-Article (3) mandates that before the expiry of the duration of the out-going Municipality, election to constitute a new Municipality shall be completed. Under subArticle (4) thereof, it is provided that in the case of dissolution, it shall be treated as bye-election surviving only for the remainder of the term of the original election. Disqualification for membership of a Municipality is spelt out in Article 243V. Under sub-Article (1) (a), such disqualifications applicable to the elections to legislatures of the State, as on the date, are adopted excepting the age factor and 21 years is made sufficient for contesting the election to a Municipality instead of 25 years prescribed for legislators. In addition to the above, disqualifications, as imposed under any law made by the Legislature of the State, are made applicable under clause (b) of sub-Article (1). Article 243W provides for authority and responsibilities of Municipalities. Article 243 X enables a Municipality to impose taxes, duties, tolls, fees etc. Article 243 Y provides for constitution of a finance commission to review the financial position of the Municipalities. Article 243 Z provides for auditing of accounts of municipalities. Article 243ZA provides for constitution of State Election Commission for the purpose of superintendence, direction and control of the preparation of the electoral rolls for and the conduct of, all elections to the Municipalities. Article 243 ZB speaks of applicability of Part IX-A to Union Territories while Article 243 ZC makes this Part inapplicable to Schedule Areas and Tribal Areas referred to in clauses (a) and (2) of Article 244. Article 243 ZD provides for constitution of committees for District Planning and 243 ZE for Metropolitan Planning. In Article 243 ZF, the laws enacted by the State Legislatures relating to Municipalities and were in force as on the date of the commencement of Constitution Amendment, i.e. 1.6.1993, were to be amended in so far as the repugnant provisions were concerned, within one year thereof. The last Article 243 ZG bars the interference of Courts in electoral matters.

18. Under Section 4 of the Act, as it stood before the Constitutional Amendment,

(a) a councillor;

(b) standing committees of the councillor; and

(c) a Commissioner

constituted the Municipal authorities. Under Section 55, the term of the Councillors was six years. While the councillors were to be elected by direct franchise by the voters in the respective wards, the Mayor and Deputy Mayor were to be elected from among the councillors. So, it was necessary that both Mayor and Deputy Mayor should have first been elected as Councillors. The term of both the Mayor and the Deputy Mayor was two years. Section 44-A enables the Government to dissolve the Corporation if, in its opinion, the

Corporation is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its power. Of course, the rule of audi alteram partem is provided before such action. But proviso to sub-Section (1) of Section 44-A gave laxity to the State Government to extend time for fresh elections after the dissolution of the Municipal Corporation from time to time.

19. To be in consonance with the Constitutional Amendment, Section 4 (3) of the Act was amended incorporating a provision for election of Wards Committees by inserting clause (bb) while retaining the standing committees in Section 4 (3) (b). Section 5-B was inserted making the term of the Corporation 5 years unless sooner dissolved under Section 44-A and for completion of election before the expiry of duration of the said 5 years and in the case of earlier dissolution, before the expiration of 6 months from the date of its resolution. Of course, there is a rule provided giving option not to hold elections in the case of dissolution if the remainder term is less than 6 months, which is also in accordance with the Constitutional Amendment. Section 6 (I) has been incorporated to constitute the State Election Commission. Section 28 was re-enacted making the Mayor's election as direct by voters from all the divisions of a Municipal area and the elections to both the Mayor and the Councillors are to be held simultaneously, with the bar imposed that neither the Mayoral candidate should contest for the post of Councillor nor the Councillor's candidate for the post of Mayor. The tenure of the Mayor is made 5 years beginning at noon on the day on which ordinary vacancy arises. In so far as the Deputy Mayor is concerned, the mode and manner of election remains the same with the requirement of the Deputy Mayoral candidate to be elected firstly as a Councillor and then to be chosen as a Deputy Mayor by a majority of the elected Councillors. In tune with the Mayor's term, the Deputy Mayor's term is also made 5 years from the date of his election but his continuance depends upon his continuity as Councillor and it is needless to mention that once a Deputy Mayor ceases to be the Councillor, ipso facto, he ceases to be the Deputy Mayor. These are the salient features, which are relevant for consideration in this case and other features of Constitution Amendment, which have also been incorporated, are questions apart.

20. In VARADARAJA PILLAI v. SALEM MUNICIPAL COUNCIL (referred supra), construing the provisions of Madras City Tenants Protection Act and the rights of the tenants, it was held by a Division Bench of this Court that such tenancy rights are the creatures of the statute and they can always be amended. The said judgment has got no bearing on this case. More relevant is the decision in JYOTI BASU v. DEBI GHOSAL (referred supra). Dealing with Representation of Peoples Act, 1951, it was held by the Supreme Court that, "A right to elect, fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right. So is the right to be elected. So is the right to dispute a election. Outside of a statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are and therefore, subject to statutory limitation".

These legal principles were stated considering the earliest cases on the point

in N.P. PONNUSWAMI v. RETURNING OFFICER, NAMAKKAL CONSTITUENCY (AIR 1952 S.C. 64) and JAGAN NATH v. JASWANT SINGH (AIR 1954 S.C. 210). The proposition in JYOTI BASU's case (referred supra) has been followed by a Division Bench of this Court in AHAMED JALALUDIN v. STATE OF TAMIL NADU (referred supra). But the above judicial precedents relate to pre-Constitution (73rd Amendment) Act, 1992, and after the said Constitutional Amendment and incorporation of Parts IX and IX-A, the legislative power of the State in Entry 5 of List II to Schedule 7 has to be read subject to the Constitutional provisions provided in Parts IX and IX-A. In fact, the judgment rendered by a Division Bench of Karnataka High Court in B.K. CHANDRASEKHAR v. STATE OF KARNATAKA (referred supra) is directly on the point. Repelling the similar argument advanced here by the learned Advocate General, it is held in paragraph 15 thereof as follows:

".....Under Entry 5 of List II, the State Legislature has the exclusive legislative power to make laws regarding local self-Government or village administration. After the 73rd Amendment comprising in Articles 243 to 243-O, the State Legislatures can no longer claim any plenary power of legislation in respect of the matters enumerated in Entry 5 of List II and their exercise of power is subject to the provisions of Part IX of the Constitution, which was introduced by the 73rd Amendment. In view of this, the submission made by Mr. S. Vijayashankar, learned Advocate General, that the State Legislature has the plenary power to legislate in respect of matters enumerated in Entry 5 of List II irrespective of the 73rd amendment of the Constitution cannot be accepted. Under the Constitution of India as originally framed, in the absence of any constitutional provision governing the constitutional power to the State Legislature enjoining plenary powers of legislation in respect of Constitution and functioning of Panchayat under Entry 5 of List II. By the 73rd amendment to the Constitution, the State Legislatures were denuded of their power in respect of the matters regarding which a provision has been made in the Constitution thus creating a new source of power under Part IX of the Constitution of India. The option available to State Legislature to constitute institutions for local self-Government and define their compositions, duration have been taken away by the constitutional amendment.

The Karnataka High Court was dealing with a converse case where the Government failed to conduct elections to Panchayat Raj institutions even after the expiry of 5 years, on the plea of enacting some amendments. The stress was on the duration of the period of authorities elected and that it could neither be less than 5 years nor exceed the same and that after 5 years term, the next body has got to be elected to conform to the Constitutional mandate.

21. The provisions in Part IX of the Constitution are analogous and in pari materia to the provisions contained in Part IX A thereof. The only difference being the composition of the said local bodies i.e., Panchayats and Municipalities.

22. Earlier, the State Government was enabled to legislate to local authorities, in view of the legislative field available in Entry-5 of List II to Schedule 7. It could enact any provisions and there was no fetters placed

excepting that the law has to conform to Part III of the Indian Constitution. But, in view of part IX A of the Indian Constitution, it is imperative on the State Government to constitute municipalities namely., (a) Nagar Panchayat, which is an area in transition from rural to urban; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area. There is no escape for the State Government from this constitutional obligation contemplated under Article 243 Q which reads as follows;
Article 243 Q: Constitution of Municipalities - (1) There shall be constituted in every State, -
(a) A Nagar Panchayat (by whatever name called) for a transitional are, that is to say, an area in transition from a rural area to an urban area.
(b) A Municipal Council for a smaller urban area; and
(c) A Municipal Corporation for a larger urban area,
in accordance with the provisions of this Part:
Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.
(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

23. Composition is also provided in Article 243 R, which mandates that all the seats in a Municipality excepting the one stated in Sub Article (2) shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as Wards.
The other aspects of composition are stated in Sub Article 2 including that of the manner of election of the Chairman of a Municipality. A reading of the said Article make things very clear. Article 243 R runs as follows:
Article 243 R: Composition of Municipalities:
(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
(2) The Legislature of a State may, by law, provide -
(a) for the representation in a Municipality of -
(i) persons having special knowledge or experience in Municipal administration;
(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or party the Municipal area;
(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within tile Municipal area;
(iv) the Chairpersons of the Committees constituted under clause (5) of article 243 S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;
(b) the manner of election of the Chairperson of a Municipality.

24. As already stated above, there was no concept of Wards Committees in the Act earlier to the constitutional amendment. Article 243 S, mandates the constitution of Wards Committees. It is apt to extract Sub Article (1) of Article 243 S, which runs as follows:
"There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more".

25. Reservation of seats to Scheduled Castes and Scheduled Tribes and the number thereof, including that of women is made compulsory in Article 243 T.
26. Duration of Municipalities is guaranteed as 5 years and excepting the power to cause dissolution of a Municipality for the reasons stated and after giving opportunity, no amendment of law on any other ground resulting in the disruption of Municipality is specifically prohibited during the period of 5 years elective term. Article 243 U reads thus:
243U. Duration of Municipalities, etc.- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed, -

(a) before the expiry of its duration specified in clause (1)
(b) before the expiration of a period of six months from the date of its dissolution.

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved."

We also feel it apt to extract Article 243 V of the Constitution, which reads, "243V. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being a member of a Municipality -

(a) if he is so disqualified by or under any for the time being in force for the purposes of elections to the Legislature of the State concerned:

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

27. In view of the above, we hold that the constitution, composition of Municipalities, as also Wards Committees, reservation of seats, tenure of Municipalities, flow from Part IX A of the Constitution and to that extent the power of the State Legislature to resort to entry 5 of List II of Schedule 7 stands excluded. In that view of the matter, it cannot be said that the Mayor's post is a statutory post and that the State Government can meddle with the said post otherwise than by Constitutional mode. State Government has got room to play either to have a Deputy Mayor, Standing Committee, Reservation for Backward Classes, and to prescribe the disqualifications other than mentioned in Clause-(a) of Sub Article-(1) of Article 243 V of the Constitution.
Issue No.3

28. The Members of the Legislative Assembly or of Lok Sabha as also of Legislative Council, if there is one in any State, and the members of Rajya Sabha can be the members of the Municipality and that is provided by sub-Clauses (i) to (iv) of clause (a) of sub-Article (2) of Article 243R of the Constitution. But there is no Constitutional mandate that such members of the Legislative Assemblies or Councils or the Lok Sabha or Rajya Sabha should be the Chairpersons of Municipalities. The Chairperson, in the context of this case, is the Mayor. Clause (b) of sub-Article (2) of Article 243 R of the Constitution leaves this aspect to the State Legislatures and in view of enabling Constitutional provision in clause (b) of sub-Article (1) of Article 243 V of the Constitution, the State Legislature is entitled to treat the sitting Members of the Legislative Assemblies, Councils, Lok Sabha and Rajya Sabha as ineligible to contest the post of Mayor or Deputy Mayor treating them as disqualified. There is no such Constitutional embargo fettering the powers of the State Legislature to incorporate such a disqualification. As such, we hold that Members of the Legislative Assembly and of Parliament in the State of Tamil Nadu can be disabled to contest the post of Mayor or Deputy Mayor of the Municipal Corporation of Chennai as also other Municipal Corporations in the State of Tamil Nadu and the Municipal Amendment is not ultra vires the Constitution in the above context.

Issue Nos.4 and 5

29. These issues are inter-related and as such are dealt with combinedly. There are no qualifications or disqualifications prescribed for a Mayoral candidate. Qualifications and disqualifications are prescribed in Sections 51 and 52 of the Act only for election as a Councillor and this can be made applicable only to a Councillor, including a Deputy Mayor, as the latter should first be a Councillor and then only is elected as Deputy Mayor. Section 53 also relates to disqualification of Councillors, which, as already stated above, takes in the Deputy Mayor also. The vital distinction between Sections 51 and 52 on the one hand and Section 53 on the other, is that the qualifications and disqualifications enumerated in Sections 51 and 52 relate to the period at the time when the candidates vie for election battle for the post of Councillor while Section 53 prescribes disqualifications after a candidate is elected as a Councillor. Under Section 28, a person, who stands for election as Mayor, shall not be eligible to stand for election as a Councillor and a person, who stands for election as Councillor shall not be eligible to stand for election as a Mayor and no councillor elected shall be eligible to stand for election as Mayor. Clear distinction being made out be tween a Councillor and a Mayor and there being no qualifications or disqualifications mentioned in the Act relating to Mayor, what applies to a candidate contesting for the post of Mayor in the election is only a Constitutional provision contained in clause (a) to sub-Article (1) of Article 243 V of the Constitution. Then we go to the disqualifications enumerated in the Representation of Peoples Act, 1951. Those disqualifications are stated in Sections 8, 8-A, 9, 9-A, 10, 10-A and 11-A. Section 8 relates to conviction for certain offences, Section 8-A to corrupt practices, Section 9 to dismissal of a Government servant for corruption or disloyalty, Section 9-A to persons having subsisting contracts with Government, Section 10 to persons holding offices under Government companies, Section 10-A to failure to lodge account of election expenses and Section 11-A to disqualification arising out of the conviction in corrupt practices. Indisputably, the present incumbent of the third respondent do not suffer from any such disqualifications. His tenure being 5 years, which is his vested right, not only under the statute but also under the Constitution, cannot be divested by any other mode than invocation of Section 44-A of the Act, which reads thus,
"44-A State Government's power to dissolve the Corporation. - (1) If in the opinion of the State Government, the corporation is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, the State Government, by notification.-

(a) dissolve the corporation from a specified date; and

(b) direct that the corporation be reconstituted with effect from a date which shall not be later than six months from the date of dissolution.

(1-A) An election to reconstitute the corporation shall be completed before the expiration of a period of six months from the date of dissolution.

(2) Before publishing a notification under sub-Section (1), the State Government shall communicate to the corporation the grounds on which they propose to do so, fix a period of not less than thirty days for corporation to show cause against the proposal and consider its explanations or objections,

if any.

(3) Nothing contained in sub-Section (1) shall affect the office of the Commissioner.

(4) On the date fixed for the dissolution of the corporation under sub-Section (1), all its members as well as the Mayor and the Deputy Mayor (including councillors who are members of committees established or constituted by or under this Act) shall forthwith deemed to have cacated their offices and the persons referred to in sub-section (2) of Section 5 shall cease to be represented in the council and fresh elections shall be held in accordance with the provisions of this Act.

(5) Dissolution shall take effect from noon on the date of publication of the notification, if no date is therein specified, and thereupon the following consequences shall ensue:-

(a) All members of the corporation as well as the Mayor and the Deputy Mayor (including councillors who are members of committees established or constituted by order under this Act) shall forthwith be deemed to have vacated their offices.

(b) All or any of the functions of the corporation, of the Mayor and of the committees established or constituted by or under this Act except the Taxation Appeals Committee may during the period of dissolution be exercised and performed, as far as may be, and to such extent as the State Government may determine by such person as the State Government appoint in that behalf and any such person may, if the State Government so direct, receive payment for his services from the municipal fund; the State Government may determine the relations of such person with themselves and may direct the commissioner to exercise and perform any powers and duties of the corporation and of the committees aforesaid except the Taxation Appeals Committee in addition to his own.

(c) All or any of the functions of the Taxation Appeals Committee may during the period of dissolution be exercised and performed by the Chairman of the said Committee.

(6) Omitted

(7) The State Government may reconstitute the corporation before the expiry of the period notified under sub-Section (1).

(7-A) All the newly elected councillors of the reconstituted corporation shall enter upon their offices on the date fixed for its reconstitution and they shall hold their offices only for the remainder of the period for which the dissolved corporation would have continued under sub-Section (1) of Section 5-B had it not been dissolved.

(8) When the corporation is dissolved under this Section, the State Government until date of the reconstitution thereof and the reconstituted

corporation thereafter shall be entitled to all the assets and be subject to all the liabilities of the corporation as on the date of the dissolution and on the date of reconstitution respectively."

This power is recognised by the Constitution in Article 243 U but excepting this enabling power of the State Government, no other power is conferred on the State Government and in fact, it is emphatically stated prohibiting amendment of any law, for the time being in force, which has the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment till the expiration of its duration specified in clause (a). Article 243U (1) is not applicable as no such proceeding under Section 44-A of the Act have been initiated. But yet the third respondent is sought to be relinquished of his post by invoking Section 6 of the Amending Act, which has already been extracted above. 15 days period has been reckoned from 4th of June 2002 and the same expired on the midnight of 18 .6.2002. But for the partial stay granted, the Mayoral post would have been deemed vacant. The Amendment which has since been brought into force, squarely fits into Article 243U (2). But an argument is raised by the learned Advocate General that the Mayor is not an integral part of Municipality and that he alone loses his post but the rest of the Municipality subsists. The learned senior counsel appearing for the petitioner and the learned Solicitor General of India counter this argument stating that the Mayor is very much an integral part of the Municipality and he heads the Municipal Corporation and the Municipal Corporation is not complete without the participation of Mayor and that when the Constitutional mandate is that the tenure of the Municipality constituted in the ordinary elections is 5 years, the same cannot be dissected and Mayor and Deputy Mayor separated. Their further contention is that unlike the pre-Constitution Amendment tenures which varied for councillors, Deputy Mayor and Mayor, the Constitution Amendment prescribed the tenure of the Municipality as 5 years and so also of the Mayor, Deputy Mayor and Councillors, uniformly and without any distinction. Section 37 of the Act deals with the prerogative of the Mayor and Section 37-A of the Act empowers the Government to entrust the Mayor with the additional functions for carrying on the purposes of the Act and under Section 38 of the Act, the Mayor is a member of all Committees. It is the Mayor who sends copies of all important resolutions of the Council, Standing Committees and Wards Committees and all the Bye-laws of the Council, to the State Government under Section 44 (1) of the Act. If, in the opinion of the Government, the Corporation is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its power, the State Government can dissolve the Corporation and proceed to direct the Corporation to be re-constituted and then notify the election for the purpose of the said re-constitution. On such dissolution, all the members of the Corporation as well as the Mayor and the Deputy Mayor, including Councillors, who are Members of the Committees established or constituted under the Act, shall forthwith be deemed to have vacated their offices. Then till the Bye-election is held, the officer so appointed will discharge the functions of the Corporation. While Sections 37, 37-A, 38 and 44 of the Act deal with prerogatives, powers and duties of the Mayor, treating him as an integral part of the Municipality, another striking feature is Section 4 4-A of the Act, which makes the entire Municipality answerable for any default in performing the duties or exceeds or

abuses its powers without there being any distinction regarding a particular councilor, Deputy Mayor or Mayor being singled out and entire body of Municipality either floats or drowns basing upon its good or bad performance. We have scanned through all the provisions and find nowhere that any action can be taken against any of the authorities of the Municipality, be it councillor, Deputy Mayor or Mayor individually, in the context of the discharge of their functions as the Municipal authorities. If that be the case, the word 'Municipality' employed in Article 243 U (2) includes Mayor, Deputy Mayor and every Councillor and divestment of the right of the said authorities either jointly or severally to continue in their respective offices for the assured term of 5 years by any law like the Amending Act otherwise than by Section 44-A incurs the wrath of sub-Article (2) of Article 243 U of the Constitution and thus becomes unconstitutional, void and inoperative. It is now too well settled a law that statutes affecting the substantive rights are prospective and those relating to procedure are retrospective. This does not mean that the legislative bodies are prevented from making the laws even affecting substantive rights retrospectively. But there are well defined limitations in exercising such power of enacting retrospective legislations affecting substantive rights. The first thing is that it shall expressly be stated in the statute as having come into effect from a date anterior to the enactment. There are statutes removing disabilities or disqualifications retrospectively by validation. The case of N. IBOMCHA SINGH v. L. CHANDRAMANI SINGH (AIR 1977 S.C. 682) can be mentioned as an instance. In the mid-term poll to Manipur Legislative Assembly held in February 1974, the respondent was elected as a Member of Manipur Legislative Assembly. The appellant was also a contender but was unsuccessful. The contention of the appellant was that the respondent having been the Speaker of Manipur Legislative Assembly at the time of dissolution of the same in 1973 and continued to hold the office of Speaker till March 8, 1974, he was disqualified to contest the Assembly seat as he held the office of profit. But the disqualification was removed by the Manipur Legislature (Removal of Disqualifications) (Amendment) Act, 1975, which was brought into force with retrospective effect from 6.2.1973. A contest to the validity of the Act in the High Court has failed. The same was upheld by the Supreme Court.

30. Then, there are statutes even creating future disqualifications basing upon past bad conducts. A leading case on the subject is STATE OF BOMBAY v. VISHNU RAMACHANDRA (AIR 1961 S.C. 307). The respondent therein was convicted for the offences under Sections 380 and 114 of the Indian Penal Code and was sentenced to one month rigorous imprisonment on 16.11.1949. Bombay Police Act, 1951 enabled Deputy Commissioner of Police, Bombay, to pass orders externing the convicts. Such power was exercised on 15.10.1957. The question raised by the respondent was that in the absence of a legal provision to extern him on the date of his conviction, his externment by the later Act of 1951 cannot sustain. The said contention, though found favour with the High Court, on appeal by the State, the Supreme Court reversed the judgment of the High Court holding that past bad conduct can always be taken as a ground for future externment approving the retrospectivity to that extent.

31. To the similar effect is the judgment of the Constitution Bench of the Supreme Court in BASHIRUDDIN v. B.S.S. MAJLIS-AWAQF (AIR 1965 S.C. 1206). In the said case, the appellant was Mutavalli of a Wakf. He was removed on the ground of disobeying the orders and directions issued by the Authority. Before the Bihar Wakfs (Amendment) Act, 1 951, there was no power vested in Majlis to remove a Mutavalli. But by the above Amending Act, Majlis were empowered to exercise that power. The appellant therein had contended that since he did not commit any act of disobeying the orders or directions issued by the Majlis after the above Amending Act, the previous occurrence, if any, cannot be taken as ground for removing him after the said Amending Act. The High Court rejected the contention and the Supreme Court also affirmed the same. It is apt to extract what the Supreme Court in paragraph 10 of the judgment held:
"10.The contention of the appellant was that as this amendment was not retrospective the power could only be exercised in respect of orders and directions of the Majlis given after the date on which amended Act came into force and not in respect of orders and directions issued previously. According to him, the amending Act is being given retrospective operation which is not permissible. We do not see any force in these contentions. The amendment, no doubt, conferred jurisdiction upon the Majlis to act prospectively from the date of the amendment but the power under the amendment could be exercised in respect of orders and directions issued by the Majlis and disobeyed by the Mutwalli before the amendment came into force. To hold otherwise would mean that in respect of the past conduct of the Mutwalli neither the Majlis nor the District Judge possessed jurisdiction after the amendment came into force. This could hardly have been intended. The enquiry had already commenced before the Majlis and it would have reported to the District Judge for removal of the appellant but this was unnecessary because the Majlis itself was competent to act. A statute is not necessarily used retrospectively when the power conferred by it is based on conduct anterior to its enactment, if it is clearly intended that the said power must reach back to that conduct. It would be another matter if there was a vested right which was taken away but there could be no vested right to continue as Mutwalli after mismanagement and misconduct of many sorts were established. The Act contemplates that such a Mutwalli should be removed from his office and that is what is important. This argument was rightly rejected by the High Court and the Court below."

From the above dicta laid down by the Constitution Bench of the Supreme Court, it is clear that only such rights, which cannot be said to be vested rights, can be taken away retrospectively.

32. Though the learned Advocate General has cited MITHILESH KUMARI v. PREM BEHARI KHARE (AIR 1989 S.C. 1247), particularly pointing out what is said in paragraph 22, the said plea may not be acceptable in view of the fact that the Municipal Amendment is not declaratory in nature and particularly in view of the fact that the said view has not been approved by a later three Bench decision of the Supreme Court in R. RAJAGOPAL REDDY v. PADMINI CHANDRASEKHARAN (1995) 2 S.C.C. 630). The said view is further fortified by a recent judgment of the Constitution Bench of the Supreme Court in SHYAM SUNDER v. RAM KUMAR (2001) 8 S.C.C. 24), which has laid down the dicta

approving the view taken by the earlier Supreme Court judgment in RAJAGOPAL REDDY's case (supra) that the functioning of a declaratory statute is to supply an omission in or to explain a previously existing statute. But if the Amending Act brings into effect new law, then the same cannot be construed as declaratory or retro-active but as retrospective. In the instant case, the Municipal Amendment introduces some new disqualifications, which were not at all there existing. As already stated above, there were no disqualifications prescribed for the post of Mayor and every thing related to the post of a Councillor. Hence, only the disqualifications as enumerated in the Representation of Peoples Act, 1951 , were to be made applicable as against a Mayor contesting the election. That was the legal position as existed during October 2001 when the third respondent filed his nomination and got elected. Apart from the general principles related to the theory of retrospectivity, the Municipal Amendment cannot sustain with two Constitutional provisions in Articles 243 V and 243 U of the Constitution staring in the face, as what is not a disqualification in Article 243 V on the date of nomination or even election cannot be made a disqualification to cut short the duration assured in Article 243 U. A Mayor loses his post either on his election being set at naught o r the Municipality being dissolved in exercise of the powers under Section 44-A of the Act. There cannot be any legislative judgment like the Municipal Amendment curtailing the term of the present elected Mayor. Such disqualifications imposed by a Municipal Amendment can only act prospectively in the future elections of Mayor and Deputy Mayor.

33. The travails of the third respondent-Mayor do not stop here. He has to cross the further hurdles on the touchstone of Section 30 of the Act. W.P. Nos.19214 and 22365 of 2001 have been filed on the premise that the third respondent cannot contest for the second consecutive term. In the first writ petition, the prayer is to declare the candidature of the Mayor - M.K. Stalin as null and void and in the second writ petition, a Writ of Quo of Warranto is sought for against him from functioning as a Mayor any further.

34. The elections to the local bodies, including that of Mayor to Chennai City Municipal Corporation, was held on 16.10.2001. The fourth respondent had already served a term as a Mayor for the period from 1996 to 2001 and again filed his nomination. His nomination was contested on the ground that he could not act as a Mayor for the second term consecutively basing on Section 30 of the Madras City Municipal Corporation Act, 1919, hereinafter referred to as the Act. A writ petition was filed on 10.10.2001 and came up for hearing as to admission on 12.10.2001 and was admitted on that day. On an oral application, an order was passed permitting the elections to go on with the participation of the fourth respondent for Mayoral post but a direction was given not to declare the result until further orders but to proceed upto the stage of counting of votes. The matter was directed to be posted on 18.10.2001 as a first case. Before the order could be signed, Mr.A.L. Somayaji, learned senior counsel, appeared for the fourth respondent along with Mr. R. Viduthalai, learned counsel, and submitted that stay cannot be granted on oral application. We heard both the learned counsel for the petitioner and the learned counsel for the fourth respondent and then amended the order to the effect that election shall go on and the fourth respondent shall be permitted to contest the election and the declaration of

election shall be made and the elected Mayor can function but that was subject to the result of the writ petition. Even on that day, the learned counsel for the petitioner made it clear that there are no remedies by way of election petition in a case like this.

35. Unlike the broad elucidation of facts and law and the constitutional provisions in W.P. No.21056 of 2002, the point in these cases lies in a narrow compass and revolves around only Section 30 of the Act. Incidentally, Sections 28 and 29 of the Act need a mention. Before the Constitution (73rd Amendment) Act, 1992, Section 28 of the Act provided an indirect election for both the Mayor and the Deputy Mayor. The Mayor and the Deputy Mayor, before their election as such, had to get themselves elected as Councillors and then compete for the said post and had to be elected with a majority among the councilors. Their term was two years while the elected term of the Councillors, whose was a direct election from the voters in the respective wards, was six years, under Section 55 of the Act. Under Section 30 of the Act, as it stood before Tamil Nadu Act 2 of 1975, which was brought forth as an amendment, an outgoing Mayor and a Deputy Mayor were eligible for re-election. But because of the amendment brought forth by the Tamil Nadu Act 2 of 1975, amending Section 30 of the Act, an outgoing Mayor or a Deputy Mayor is made ineligible for re-election as the Mayor or the Deputy Mayor, as the case may be, during the period upto the next ordinary election and in case of extension of term of office of the councilors by any law for the time being in force, during the remainder of the period of such extension.

36. Interpretation is sought for by the learned counsel for the petitioner that a Mayor cannot stand for election in the next ordinary election and that only after expiry of the said tenure of ordinary election, he can again contest for a Mayor.

37. Mr. R. Viduthalai, learned counsel appearing for the fourth respondent, submits that Section 30 of the Act was only applicable to the term of 2 years, which was prescribed for a Mayor in the preConstitution amendment

and because of the Constitutional amendment, the term of the Mayor is fixed to 5 years and as such, the bar under Section 3 0 of the Act cannot be made applicable.

38. But the fact remains that Section 30 has not been amended and in so far as the Constitutional (73rd Amendment) Act is concerned, there is no such fetter placed upon the Legislature to restrict the election of Mayor for only one term and to prevent him from contesting for the second consecutive term. In fact, the situation is otherwise as clause (b) of sub-Article (2) of Article 243 R of the Constitution enables the State Legislature to provide the manner of election of the Chairman of a Municipality. The Chairman, in the context of this case, is the Mayor. It was for the State Government to amend Section 30 of the Act making the Mayor eligible to contest for the second consecutive term but there is no such amendment brought forth by the State Government. It is not for this Court to suggest any amendment or read anything beyond what is contained in Section 30 of the Act. While it is true that the enactment of Section 30 of the Act was when the term of Mayor was two

years, we cannot invoke the doctrine of causus omissus. In fact it is not even a case for invocation of the said theory.

39. Section 30, in clear terms, states that an outgoing Mayor or Deputy Mayor, shall not be eligible for re-election as Mayor or Deputy Mayor, as the case may be, during the period upto the next ordinary election and in case of extension of term of office of the councilors by any law for the time being in force, during the remainder of the period of such extension. The words, 'ordinary vacancy' and 'ordinary election' are defined in sub-Section (16) to Section 3 which reads, ' ordinary vacancy' means a vacancy occurring by efflux of time and ' ordinary election' means an election held on the occurrence of an ordinary vacancy. The Mayor, whose term was two years in the election, was not entitled to contest in the remainder period of two years and was only entitled to contest in the next ordinary election. The intent was clear that immediately next to the expiry of his tenure, a Mayor was made ineligible to contest and had to wait till the ordinary election. Even though the term of 2 years is enlarged to 5 years, the situation does not change as no ordinary vacancy arises until after 5 years upon which ordinary election is held. In the instant case, ordinary vacancy of the fourth respondent had occurred by efflux of time of 5 years in the year 2001 and since the ordinary election was held on 16.10.2001, which becomes the second consecutive election of the fourth respondent, the fourth respondent was ineligible to contest the Mayoral post. Of course, an argument has been advanced by Mr. R. Viduthalai, learned counsel for the fourth respondent, that the remedy lay only in filing an Election Petition. We do not agree with such submission for the reasons stated already because of the order passed on 12.10.2001, which is extracted below.

"After the order has been passed, the fourth respondent, through advocate, has appeared before us and then, before signing the order, we have again assembled and taken up the matter. Then we have heard both the learned counsel. The learned counsel appearing for the fourth respondent points out that no stay of election is sought for. To this, the learned counsel for the petitioner submits that there is no remedy of election petition like the one provided in the case of Councillor. Oral stay is sought even without stay petition being filed. As the interpretation revolving around Section 30 of the Madras City Municipal Corporation Act 1919 is involved with regard to the eligibility of a Mayor of Madras City to contest for the second time, we admit this writ petition. Issue Rule NISI. Call for records returnable in eight weeks. The question of stay of either election or the counting and declaration does not arise. The election shall go on and the fourth respondent shall be permitted to contest the election and the declaration of the election shall be made. The candidate declared as Mayor shall also be entitled to function. But all that shall be subject to the result of the writ petition.

The writ petition shall come up for hearing in usual course. For filing counter by the respondents, 8 weeks time from today is granted."

40. That apart, in a recent judgment rendered in K. VENKATACHALAM v. A. SWAMICKAN (1999) 4 S.C.C. 526), it was held that Article 226 of the

Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised and when there is any act, which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief, after the whole of the election process is over. We reiterate that on the date of admitting the writ petition and passing an order on 12.10.2001, referred supra, it was a clear understanding between the parties that the election shall be subject to the result of the writ petition. In that view of the matter, we feel it not necessary to deal with the contention as to in a matter like this, which involves interpretation of Section 30 of the Act, whether election petition is maintainable.

In view of what is stated supra, though the petitioner in W.P. No.2 1056 of 2002 succeeds, the petitioner in W.P. Nos.19214 and 22365 of 2001 also succeeds and consequently, all the writ petitions are allowed. But the result is that the third respondent in W.P. No.21056 of 2002 and fourth respondent in the other writ petitions, viz. M.K. Stalin, who is presently the Mayor, cannot act any further as a Mayor and his seat as a Mayor falls vacant from this date. Each party shall bear their own costs. Consequently, the connected W.M.Ps. are closed.

(B.S.R., CJ) (D.M., J)
bh/sm .09.2002

INTERNET : YES

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